

IN THE MATTER OF	:	BEFORE THE
<b>TERRAPIN ADVENTURES</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-055V

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### **DECISION AND ORDER**

On January 21, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Terrapin Adventures for a variance to reduce the 30-foot structure and use setback from a residential district up to 10.6 feet for an outdoor recreation ropes course in a B-2 (Business: General) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. Matt Baker testified in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, currently known as 8600 Foundry Street, is located in the 6<sup>th</sup> Election District in the southwest corner of the Washington Street intersection with Fair Street (the "Property"). The Property is identified on Tax Map 47, Grid 11, as Parcels 93 and 461.

1. The long, narrow, irregularly shaped and partly wooded Property is the site of the historic Savage Mill complex. The Property and complex wrap around five residential properties fronting on Washington Street. The main Savage Mill building lies to the south and southeast of the easternmost residential property. To the west of the main mill building is a large parking lot. This parking lot and drive aisle narrows as it continues to the south of and parallel to the residential properties, then ends in a turnaround at the western entrance to the main mill building. The proposed outdoor adventure structures would be located to the south of this parking lot (the "Site"). The long, narrow Site is partly open and partly wooded

2. The Petitioner, Terrapin Adventures, is requesting a variance from Section 119.D.2.b of the Zoning Regulations to reduce the 30-foot structure and use setback from a residential district up to 10.6 feet for an outdoor recreation ropes course. The encroaching structures would consist of platform poles supporting a ropes challenge course, including a "zip line" on which participants hanging on a cable would descend. This zip line structure would be situated in the narrowest, western part of the Site, with other outdoor recreation course features situated in the wider, eastern section. The Petitioner is seeking a variance because the zip line structure and use would encroach up to 19.4 feet into the 30-foot setback from the R-20 zoned park property to the south.

3. In Board of Appeals Case Nos. 07-001V and 07-017V, variances were granted in 2007 to Summit Associates for retaining walls and parking for two proposed hotel buildings. According to the Variance Plan in this case, the hotel developers (apparently) have submitted the hotel site development plan to the county (SDP-07-076).

4. Vicinal Properties. To the Site's north are the largest Savage Mill parking lot and the main mill building. To the south are the old millrace and a stone wall. Beyond the wall lies the steep, wooded, and broad Little Patuxent River valley. On the opposite hillside are several R-SC zoned residential lots fronting on Gorman Road. The area west and south of the Property is zoned R-20 and is part of Savage Park.

5. Roads. Foundry Street has two travel lanes and a variable pavement width within a variable right-of-way. The posted speed limit is 25 miles per hour. The estimated sight distance from the Foundry Street entrance is about 450 feet to the north, and about 240 feet to the south. No traffic data is available for Foundry Street. For Gorman Road the traffic volume was 5,511 average daily trips as of February 1999.

6. The Property is served by public water and sewer.

7. The General Plan's 2000-2020 Policies Map designates the Property as "Residential Areas and Redevelopment Corridors" and depicts Foundry Street as a Minor Collector.

8. Matt Baker testified that the location of the zip line structures is dictated by the need to generate gravity and to provide sufficient distance from the parking lot to allow guests to glide through the woods with a minimal view of the lot.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using

the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property and Site's narrowness and irregular shape are unique physical conditions causing the causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. While the adventure course is a commercial use, its outdoor recreational nature is compatible with the adjoining park use. I therefore conclude the granting of the variance will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size and shape of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The zip line's location is dictated by the need to generate gravity and to provide sufficient distance from the parking lot to allow guests to glide through the woods with a minimal view of the lot. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this 2<sup>nd</sup> day of February 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Terrapin Adventures for a variance to reduce the 30-foot structure and use setback from a residential district to 10.6 feet for an outdoor recreation ropes course in a B-2 Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition and site development plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**

**Date Mailed:**

2/5/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.